

IN THE DISTRICT COURT OF MURRAY COUNTY
STATE OF OKLAHOMA

FILED
MURRAY COUNTY, OKLAHOMA

FIRST UNITED BANK AND TRUST COMPANY,
an Oklahoma Banking Company,
Plaintiff,

DEC 14 2015

CHRISTIE PITTMAN, Court Clerk
By GC Deputy

vs.

CJ-2015-59

CASEY L. SAUNDERS, a single person,
et al, Defendants.

ANSWER AND COUNTERCLAIM

Comes now the Defendant Casey L. Saunders, by and through his attorney, John H. Scaggs, and for his Answer to Plaintiff's Petition alleges and states as follows:

1. Defendant admits paragraphs 1 thru 4. Defendant denies paragraph 5 and 6 in part and admits in part. The date of execution of the subject documents were incorrectly dated from actual date of closing the loan.

The Defendant neither admits nor denies the amount due Plaintiff in paragraph 6 under the subject promissory note and is without sufficient knowledge at the present time to determine the exact amount due. Defendant asked below in his Counterclaim for an accounting of the promissory note payments, interest and charges. Plaintiff made charges to said account from time to time without Defendant's knowledge or consent and from time to time erroneously made charges that may or may not have been deleted. Until an accounting occurs Defendant is unable to admit or deny the allegations of paragraph 6.

2. Defendant admits paragraph 7 except for the phrases "single person" and "first and prior lien."

3. Defendant admits the documents referenced in paragraphs 8, 9, 12, and 13, are correctly set out in the pleading.

4. Defendant denies paragraphs 10 and 11 and demands strict proof thereof.

5. Defendant denies paragraphs 14 and 15 and demands strict proof thereof.

6. For further Answer Defendant alleges and states as follows:

a. Defendant re-pleads each and every material allegation set for hereinabove and incorporates same by reference.

b. That the interest which Defendant actually paid appear to be in excess of the interest rate of 6.25% as set forth in the promissory note alleged in paragraph 5 of Plaintiff's Petition.

c. That Defendant has paid interest and other charges to Plaintiff which Defendant believes are in excess of \$10,000.00 more than that provided by the promissory note described in paragraph 5 of Plaintiff's Petition.

d. That the promissory note and accompanying mortgage set forth in Plaintiff's Petition were a construction loan financing and were to become the basis for permanent financing thereafter, which Plaintiff has wholly failed to perform and is in breach of the original contract for construction and permanent financing.

e. Defendant has paid each and every payment and extension payment consideration timely and is not in default.

f. Defendant asserts the following affirmative defenses:

1. Nonjoinder of party Defendant
2. Estoppel
3. Failure of consideration
4. Fraud
5. Payment
6. Waiver
7. Limitations of action and repose of claim

7. That Defendant is entitled to an attorney's fee and costs of litigation.

Wherefore having Answered fully, Defendant prays that he have Judgment in his favor and that Plaintiff's claim be denied and that Defendant be discharged with his attorney's fees and costs and such other and further relief as he may show himself entitled.

COUNTERCLAIMS

Comes now the Defendant Casey L. Saunders, by and through his attorney John H. Scaggs, and for his Counterclaim alleges and states as follows:

8. Defendant re-pleads each and every material allegation as forth hereinabove and incorporates same by reference.

COUNTERCLAIM I BREACH OF CONTRACT

Comes now the Defendant Casey L. Saunders and for his cause of action against Plaintiff for breach of contract alleges and states as follows:

9. Defendant re-pleads each and every material allegation set forth hereinabove and incorporates same by reference.

10. That the Defendant was induced by Plaintiff's agents and employees to use Plaintiff as a lender to purchase and re-model his home in Murray County, OK at the legal description described in Plaintiff's Petition. The construction loan was executed as per the agreement. Defendant attempted to obtain permanent financing through Plaintiff but Plaintiff has failed to comply with its permanent financing agreement .

11. That on at least three (3) separate attempts to close permanent financing loans, Plaintiff refused to close based upon errors of fact created by Plaintiff which included: an inadequate and erroneous appraisal by an appraiser chosen and regularly used by Plaintiff; erroneous credit rating based upon Plaintiff's false and

inaccurate reporting of Defendant being in default on the subject construction loan repayment and other similar errors by Plaintiff.

12. That Defendant was repeatedly promised permanent financing by agents of Plaintiff but Plaintiff has wholly refused and failed to provide the permanent financing promised and used to induce Defendant into the original loan transaction.

13. The Plaintiff has failed to provide the permanent lending promised and is in breach of original contract, all to the Defendant's detriment in the amount in excess of \$10,000.00.

14. That Defendant is entitled to an attorney's fee and costs of the action for breach of contract.

Wherefore Defendant prays it have judgment against Plaintiff for breach of contract in an amount in excess of \$10,000.00 money damages, for attorney's fees and the costs of the action and such other and further relief as the Defendant may show himself entitled.

COUNTERCLAIM II ACCOUNTING

Comes now the Defendant Casey L. Saunders and for his cause of action for fraud and misrepresentation alleges and states as follows:

15. Defendant re-pleads each and every material allegation set forth hereinabove and incorporates same by reference.

16. That the promissory note set forth in Plaintiff's Petition provides interest to be charged at the rate of 6.25%. Defendant alleges that either an interest rate higher than that called for by the subject promissory note was charged or other charges that are not provided for in the loan documents or explanations from Plaintiff of Defendant's payments.

17. That because Defendant has made payments demanded by Plaintiff which neither the loan documents nor explanations of Plaintiff support, Defendant is entitled to an accounting from Plaintiff as to each

and every charge and payment required and paid by Defendant during the history of the subject promissory note and secured by mortgage.

18. Defendant is entitled to an attorney's fee and costs of obtaining an accounting.

Wherefore Defendant prays that he have judgment against Plaintiff for and accounting and attorney's fees and costs of the action and for such other and further relief as the Defendant may show himself entitled.

COUNTERCLAIM III

LIBEL

Comes now the Defendant Casey L. Saunders and for his cause of action for libel alleges and states as follows:

19. Defendant re-pleads each and every material allegation set forth hereinabove and incorporates same by reference.

20. That Plaintiff has on at least three (3) occasions reported to credit rating firms that Defendant was in default of payment on the subject construction loan to Plaintiff in excess of \$90,000.00. Said report was incorrect, untrue, false and contrary to the on-going course of business and conduct by and between Plaintiff and Defendant. Plaintiff, by and through its agents and employees, knew the credit reports were incorrect, untrue, false and contrary to the course of business and conduct of the parties herein at the time the reports were made.

21. Said libelous reporting was used as a basis to deny Defendant permanent lending on the subject construction and permanent loan; further the erroneous reporting have caused credit card lenders to increase the interest rate charged Defendant all to Defendant's detriment in at least the sum of \$10,000.00.

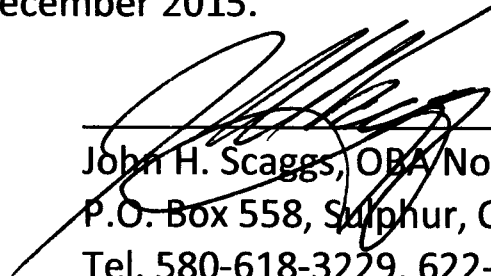
22. That said false reports were made intentionally and/or in reckless disregard of the rights of Defendant to have the excellent credit rating he began with at the time that Plaintiff and Defendant entered into the subject construction loan for which Defendant is

entitled to exemplary damages in excess of \$50,000.00. Said excellent credit rating of Defendant was in fact a basis for the solicitation from Plaintiff to lend money to Defendant.

23. Defendant is entitled to attorney's fees and costs of the action.

Wherefore Defendant prays he have judgment against Plaintiff upon his claim for libel in the amount in excess of \$10,000.00 money damages, and exemplary damages in an amount in excess of \$50,000.00 and attorney's fee, costs of the action and for such other an further relief as the Defendant may show himself entitled.

Done this 11th day of December 2015.

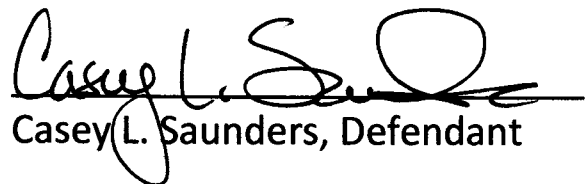


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Attorney for Defendant

VERIFICATION

STATE OF OKLAHOMA
COUNTY OF MURRAY

On this 11th day of December, after first being sworn, the undersigned Casey L. Saunders, upon his oath, states that he has read the above Answer and Counterclaim and that the allegations contained therein are true and correct to the best of his knowledge and belief.



Casey L. Saunders, Defendant

Subscribed and sworn before me the undersigned notary public on this 11th day of December 2015.



Notary Public

My Commission expires: *June 1, 2019*
My Commission number: *11004931*

CERTIFICATE OF SERVICE

A true and correct copy of the above Answer and Counterclaim was served upon counsel for Plaintiff by U.S. Mail, postage pre-paid, this 11th day of December 2015 as follows:

Heather Burrage,
Burrage Law Firm
1201 Westside Drive
P.O. Box 1727
Durant, OK 74702-1727



John H. Scaggs